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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**BLENDJET’S MOTION TO COMPEL
REGARDING RFP NO. 44 AND
SUPPLEMENTAL SEARCH TERMS**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Pursuant to Fed. R. Civ. P. 45(d)(2)(B) and DU Civ.R 37(b), Defendant BlendJet moves to compel Plaintiff Blendtec to produce documents responsive to: (i) BlendJet’s Request for Production No. 44 (Exhibit A); and (ii) BlendJet’s Supplemental Search Terms (Exhibits B-C).

On March 7, 2023 (1:00 MST), BlendJet’s counsel (Patrick McGill and Jesse Salen) conferred telephonically with Blendtec’s counsel (Brett Foster and Tammy Kapaloski) regarding the issues raised in this motion.

In response to RFP No. 44, Blendtec agreed to produce “*any* non-privileged documents, within its possession, custody, or control related to the marketing and branding services performed by Enlisted Design or the BYU Marketing Lab on behalf of Blendtec.” (Exhibit A at 9-10 (emphasis added).) However, Blendtec has not made good on its commitment, contending that its production obligations were satisfied by: (i) Blendtec’s production of an admitted subset of the responsive work product of Enlisted Design and BYU;¹ (ii) Blendtec’s production of a limited number of emails relating to those entities’ work that serendipitously hit on unrelated search terms; and (iii) Enlisted’s and BYU’s separate production of documents in response to BlendJet’s subpoenas (*see* Dkt 88 at 8-9; Exhibit D at 4-5).²

In accordance with this position, Blendtec has refused to produce documents – or even the search term hit report required by the ESI Protocol (*see* Dkt. 33 at ¶ 40) – in response to supplemental search terms related to Enlisted’s and BYU’s work. (Exhibit B; Exhibit D at 4-5).

¹ Enlisted Design continues to provide Blendtec with marketing and branding consulting services. (*See* Exhibit E at 1.)

² Exhibit D as submitted is redacted as to matters not raised by this motion. BlendJet will provide an unredacted copy if requested.

Blendtec should be compelled to fully respond to RFP No. 44. Blendtec admits it possesses responsive documentation. (*See* Dkt. 88 at 8-9.) The Court recognized the relevance of the services provided by Enlisted and BYU. (*See* Dkt. 88 at 8-9.) BlendJet’s provision of search terms for custodial email in the Supplemental Search Terms is an appropriate and reasonable approach to production of responsive and relevant materials. Blendtec’s characterization of the Supplemental Search Terms as “untimely” because they were served in February 2023 is not only without basis under the Scheduling Order (search terms are not Rule 34 requests controlled by the Jan. 23 deadline (Dkt. 35 at 1)), and/or the ESI Protocol (setting no specific deadline for the service of search terms), but also runs counter to the logical flow of discovery: ***Only after*** Blendtec began producing custodial email ESI ***in February*** could BlendJet discern which custodians worked with BYU and Enlisted – and ***only then*** could BlendJet serve search terms targeting communications from those specific custodians.³

BlendJet requests award of its attorneys’ fees under FRCP 37(a)(5)(A).

³ The same is true regarding the search terms for “blendid” and “blendfresh” in the Supplemental Search Terms, which target relevant documentation from custodians revealed to have such documentation only after Blendtec began producing email ESI in February. (Exhibit B at 3; C at 3.)

Respectfully submitted this 24th day of March, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send an electronic notification to counsel of record for all parties, including the following:

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